

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LYDEN NURSING HOME,

Petitioner,

- against -

MEMORANDUM and ORDER

DENNIS RIVERA, in his official capacity
as President of NEW YORK'S HEALTH
& HUMAN SERVICE UNION 1199/SEIU,
AFL-CIO, and NEW YORK'S HEALTH
& HUMAN SERVICE UNION 1199/SEIU,
AFL-CIO,

03 CV 4856 (SLT)(JMA)

Respondents.

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TOWNES, United States District Judge:

Petitioner, Lyden Nursing Home, commenced this action by filing a petition pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185, seeking an order enjoining and/or staying all judicial proceedings pertaining to the August 5, 2003, arbitration award rendered by Arbitrator Martin F. Scheinman, Esq., pending the outcome of proceedings in cases numbered 29-RC-9785 and 29-RC-9937, before Region 29 of the National Labor Relations Board. Respondents, Dennis Rivera and New York's Health and Human Service Union 1199/SEIU, AFL-CIO, filed their answer with counterclaim, seeking to dismiss the petition and confirm the award. On May 3, 2004, petitioner moved for summary judgment pursuant to Federal Rule of Civil

Procedure 56 to vacate the award. Respondents opposed petitioner's motion and filed their own motion for summary judgment seeking to confirm the award, including prejudgment interest, attorneys' fees, and costs. On January 22, 2004, U.S. District Judge Sterling Johnson, Jr., referred all dispositive motions to U.S. Magistrate Judge A. Simon Chrein for a report and recommendation. Thereafter, this case was reassigned to the undersigned and U.S. Magistrate Judge Joan M. Azrack. A report and recommendation was submitted by Magistrate Judge Azrack on May 13, 2005 (the "R&R"), which this Court adopts in its entirety.

A district judge may designate a magistrate judge to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motions. *See* 28 U.S.C. § 636(b)(1). Within ten days of service of the recommendation, any party may file written objections to the magistrate judge's report. *See id.* Upon *de novo* review of those portions of the record to which objections were made, the district judge may affirm or reject the recommendation(s). *See id.*

The Court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). In addition, failure to file timely objections may

waive the right to appeal this Court's Order. *See* 28 U.S.C. § 636(b)(1); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

In this case, Magistrate Judge Azrack recommended: (1) that petitioner's motion to enjoin and/or stay all judicial proceedings pertaining to the August 5, 2003, arbitration award, and to toll the statute of limitations relating to such proceedings, be denied, or alternatively stated, that petitioner's motion to vacate the arbitration award be denied; (2) that petitioner's motion for summary judgment be denied; (3) that respondents' summary judgment motion be granted; (4) that respondents be awarded prejudgment interest on the award at the statutory rate of nine percent per annum, beginning on September 5, 2003; and (5) that respondents' request for attorneys' fees and costs be denied.

No objections to the R&R were timely filed with this Court. Accordingly, the Court has reviewed the R&R for clear error on the face of the record. *See* Advisory Comm. Notes to Fed. R. Civ. P. 72(b); *accord Edwards v. Town of Huntington*, N^o 05 Civ. 339 (NGG)(AKT), 2007 U.S. Dist. LEXIS 50074, at *6 (E.D.N.Y. July 11, 2007); *McKoy v. Henderson*, N^o 05 Civ. 1535 (DAB), 2007 U.S. Dist. LEXIS 15673, at *1 (S.D.N.Y. March 5, 2007). Having reviewed the record, I find no clear error. I hereby adopt the R&R, in its entirety, as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

CONCLUSION

(1) Petitioner's motion to enjoin and/or stay all judicial proceedings pertaining to the August 5, 2003, arbitration award rendered by

Impartial Chairman, Martin F. Scheinman, Esq., and to toll the statute of limitations is DENIED;

(2) Petitioner's motion for summary judgment vacating the said August 5, 2003, arbitration award is DENIED;

(3) Respondents' motion for summary judgment confirming the said August 5, 2003, arbitration award and dismissing petitioner's "Petition to Enjoin and/or Stay Arbitration Award Proceedings" is GRANTED;

(4) Respondents' motion for prejudgment interest on the August 5, 2003, arbitration award beginning September 5, 2003, is GRANTED; and

(5) Respondents' motion for attorneys' fees and costs is DENIED.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
September 28, 2007

Sandra L. Townes

SANDRA L. TOWNES
United States District Judge